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United States Senate

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SMALL BUSINESS AND ENTREPRENEURSHIP

December 11, 2017

1060

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St NW
Washington, D.C. 20554

Dear Chairman Pai,

I write to express my strong concern regarding your recent proposal to significantly alter the current net neutrality rules. Not only will this rule, the Restoring Internet Freedom Order, hurt consumers, small businesses and rural America, the regulatory process used to reach this rule appears fundamentally compromised with potentially millions of comments fraudulently submitted. I am requesting that you brief my office on this proposal and how the special needs of small businesses, consumers and rural America will be protected if it is implemented. I also request that you immediately launch an investigation to ascertain the causes of the fraud in the notice and comment process, develop solutions, and share with Congress the results of your findings.

In the 2015 Open Internet Order – commonly known as the net neutrality rule – the standard rules in practice were codified into clear rules preventing Internet Service Providers (ISP) from blocking content, throttling speeds and access to content over the internet, or creating paid fast lanes that prioritize some content over others. Codifying these basic internet principles has protected consumers and allowed the internet economy to continue to thrive.

However, the Restoring Internet Freedom Order will remove these consumer protections and simply require ISPs to “be transparent about their practices so that consumers can buy the service plan that’s best for them.” While transparency for consumers is important, transparency alone is not enough to protect consumers from an erosion of the net neutrality principles. Prior to 2015, some of largest ISPs had previously experimented with business practices that violated one of the basic principles of net neutrality. The most high profile of these was when Netflix was forced to make a deal with Comcast to keep its streaming content at a high resolution, something that Netflix customers expect from the service. I believe it is short-sighted to deregulate ISPs from any sort of future business practices that violate the net neutrality principles that Americans have come to expect, and I fear that small businesses and rural Americans will be among those especially impacted.

Small businesses and startup companies have been able to take advantage of an internet connection to reach more customers and grow their brand, thus employing more Americans and growing the economy. Net neutrality ensures a level playing field between large and small companies in the digital era, preventing larger companies from tipping the digital scales in their favor and squeezing out growing businesses. Startup companies within North Dakota have reached out to me detailing their concerns that they might soon see an unfair digital playing field and be asked to pay higher costs to provide their services over the internet.

Rural internet users also stand to lose out if the Federal Communications Commission (FCC) reverses net neutrality. As you know, rural America is the hardest place to provide internet services

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and oftentimes rural consumers only have one option for their ISP. If the degradation of net neutrality principles became the norm for the larger and mid-size ISPs, I fear that smaller rural providers would have little choice but to follow suit and consider new business models. Thus, rural consumers could be forced to accept these net neutrality violations or forgo internet service altogether.

Altering the internet landscape could also have severe impacts on our rural schools and institutions of higher education. North Dakota's schools are rapidly expanding their use of technology in the classroom to enhance educational opportunities and quality for our students. For example, some of our rural schools are utilizing their internet connections to offer STEM courses through video conferencing that would be otherwise unavailable. For many of our rural and underserved students, school may be the only place they can access a reliable, high-speed internet connection. Should the proposal be adopted, video lectures and online learning resources that are essential to the growth of our schools and institutions of higher education may become unavailable or cost prohibitive.

Furthermore, the apparent fraudulent nature of many of the comments submitted during the public comment period for this rulemaking is quite concerning and requires significant follow-up to ascertain the causes of the fraud and develop solutions. It is imperative that the American people have a meaningful voice during the promulgation of regulations that impact their daily lives. To ensure this standard, the Administrative Procedures Act enshrined a public comment period in the rulemaking process. However, the process implemented by the FCC was maliciously undermined, resulting in a docket that cannot be trusted to represent the true feelings of the American public and its business community.

In research done by the Pew Research Center, they found that 57 percent of the almost 22 million comments were submitted using temporary or duplicate email addresses. Furthermore, New York Attorney General Eric Schneiderman estimates that at least one million Americans had comments submitted in their names without their knowledge or consent. With trust in government already at historic lows, these revelations do nothing but continue that erosion. If members of Congress cannot trust that the comments agencies receive regarding proposed rules are legitimate, we will be unable to tell our constituents that federal agencies are making decisions only after the consideration of their thoughts and opinions. I urge you to conduct a vigorous investigation to determine how the comment system for this rulemaking was so corrupted, by whom, and the steps forward to rework the comment portal prevent this from happening again. I also urge you to cooperate with ongoing investigations into this matter such as those being led by the FCC Inspector General's office and the New York State Attorney General.

I appreciate you taking into account my concerns and conducting a full investigation into the comment system abuse. I also look forward to receiving a briefing from you on this proposal and the steps the Commission took to protect the needs of small businesses and rural America.

Sincerely,



Heidi Heitkamp
United States Senator

Cc:

Federal Communications Commissioner Michael O'Rielly
Federal Communications Commissioner Mignon Clyburn
Federal Communications Commissioner Jessica Rosenworcel
Federal Communications Commissioner Brendan Carr



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 24, 2018

The Honorable Heidi Heitkamp
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Heitkamp:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

At the dawn of the commercial Internet in 1996, President Clinton and a Republican Congress agreed that it would be the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.” This bipartisan policy worked. Encouraged by light-touch regulation, the private sector invested over \$1.5 trillion to build fixed and mobile networks throughout the United States. Innovators and entrepreneurs grew startups into global giants. America’s Internet economy became the envy of the world.

Then, in early 2015, the FCC jettisoned this successful, bipartisan approach to the Internet and decided to subject the Internet to utility-style regulation designed in the 1930s to govern Ma Bell. This decision was a mistake. For one thing, there was no problem to solve. The Internet wasn’t broken in 2015. We weren’t living in a digital dystopia. To the contrary, the Internet had been a stunning success.

Not only was there no problem, this “solution” hasn’t worked. The main complaint consumers have about the Internet is not and has never been that their Internet service provider is blocking access to content. It’s that they don’t have access at all or enough competition between providers. The 2015 regulations have taken us in the opposite direction from these consumer preferences. Under Title II, annual investment in high-speed networks declined by billions of dollars—the first time that such investment has gone down outside of a recession in the Internet era. And our recent Broadband Deployment Report shows that the pace of both fixed and mobile broadband deployment declined dramatically in the two years following the *Title II Order*.

Returning to the legal framework that governed the Internet from President Clinton’s pronouncement in 1996 until 2015 is not going to destroy the Internet. It is not going to end the Internet as we know it. It is not going to undermine the free exchange of ideas or the fundamental truth that the Internet is the greatest free market success story of our lifetimes.

You note that “[f]or many of our rural and underserved students, school may be the only place they can access a reliable, high-speed internet connection.” I agree—which is why our top priority must be closing the digital divide and empowering the millions of rural Americans who were left behind by the prior Administration. By returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G. This means there will be more competition among broadband providers. It also means more ways that companies of all kinds and sizes can deliver applications and content to more users. In short, it’s a freer and more open Internet.

The *Restoring Internet Freedom Order* also promotes more robust transparency among ISPs than existed three years ago. It requires ISPs to disclose a variety of business practices, and the failure to do so subjects them to enforcement action. This transparency rule will ensure that consumers know what they’re buying and that startups get information they need as they develop new products and services.

Moreover, we reestablish the Federal Trade Commission’s authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II “common carriers.” But now we are putting our nation’s premier consumer protection cop back on the beat.

You note the importance of public participation in the comment process, and the Commission is grateful to all commenters who engaged the legal and public policy questions presented in this rulemaking. As contemplated by the Administrative Procedure Act, these comments ensured that the Commission considered all important aspects of its proposal to reclassify broadband Internet access service as an “information service” and restore the “light-touch” regulatory framework that fostered a free and open Internet in the United States prior to 2015.

To be sure, this proceeding carried the potential for advocates on either side to abuse the process to create an appearance of numerical advantage. But the Commission does not make policy decisions merely by tallying the comments on either side of a proposal; were it otherwise, agency decisions would require not Commissioners exercising reasoned judgment but calculators performing a simple count. Nor does the Commission attribute greater weight to comments based on the submitter’s identity. Accordingly, the Commission has never burdened commenters with providing identity verification or expended the massive amount of resources necessary to verify commenters’ identities. Rather than dwell on how well automated or form submissions reflect actual popular support, the Commission has instead focused on encouraging robust participation in its proceedings and ensuring that it has considered how the substance of submitted comments bear on the legal and public policy consequences of its actions.

Despite any suggestion that the public comment process was somehow “flawed” or “tampered with” by the alleged submission of comments under false names, any such activity did not affect the Commission’s actual decision-making—that is, the agency’s ability to review the record, respond to comments that raised significant issues, and make a reasoned judgment. I am not aware of any evidence to the contrary. Indeed, any reasonable review of the *Order* would

demonstrate precisely the opposite—that the Commission painstakingly engaged with the voluminous public record in this proceeding (namely, the many substantive comments that meaningfully grappled with the policy issues raised in the Notice of Proposed Rulemaking) in reaching its conclusions. To the extent you are concerned with non-substantive comments submitted under multiple different names that stated simply that the commenter supported or was opposed to the Title II classification without substantive explanation, as you can see in the *Order*, the agency did not rely on or cite any such comments.

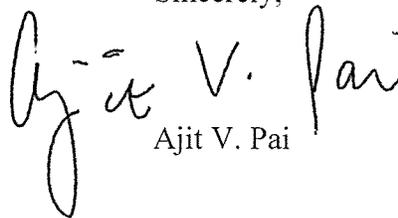
The Commission is staunchly committed to transparency and integrity in rulemaking proceedings, including in connection with the *Restoring Internet Freedom* proceeding. To that end, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded by inviting them to file a statement to that effect in the public record. In addition, as noted above, members of the public had an opportunity to comment on the substance of the public draft released three weeks prior to the scheduled vote, pursuant to my transparency initiative.

The Commission followed the well-established notice-and-comment process prescribed in the Administrative Procedure Act. That process resulted in an order consistent with both the Communications Act and the public interest.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is written in a cursive style with a large, looping initial "A".

Ajit V. Pai